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FOR A FRAMEWORK CONVENTION ON CLIMATE CHANGE
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IMPLEMENTATION OF ARTICLE 11 (FINANCIAL MECHANISM), PARAS. 1-4

Modalities for the functioning of operational linkages between the Conference of the Parties and the operating entity or entities of the financial mechanism

Note by the Chairman of the Committee

Addendum

1. At its seventh session the Committee adopted the following conclusion on the above-mentioned subject (A/AC.237/31, para. 32(l)):

"Having reviewed the need for arrangements under Article 11, paragraph 3, to be agreed between the Conference of the Parties and the operating entity or entities of the financial mechanism, the Committee requested the Bureau, with the assistance of the Executive Secretary, to prepare a report for consideration at its eighth session on modalities for the functioning of operational linkages between the Conference of the Parties and the operating entity or entities of the financial mechanism, in accordance with the provisions of the Convention, taking into account the views expressed by delegations and others;"

2. At the request of the Bureau, the Executive Secretary submitted a note on the subject for its consideration, suggesting possible elements of a report by the Bureau. The Bureau reviewed this note during a meeting it held on 18 and 19 June 1993 in New York. In view of the number of issues raised in the note, and the limited time available to consider it, the Bureau agreed that it would be useful for the Committee to be aware of the suggestions of its secretariat.

3. Consequently, a note by the secretariat to the Bureau is annexed hereto, as a background for the further discussion of this subject by the Committee, in Working Group II. This note takes account of some points made during the Bureau's discussion but does not represent the views of the Bureau.

Annex I

MODALITIES FOR THE FUNCTIONING OF OPERATIONAL LINKAGES BETWEEN THE CONFERENCE OF THE PARTIES AND THE OPERATING ENTITY OR ENTITIES OF THE FINANCIAL MECHANISM

Note by the secretariat to the Bureau

I. INTRODUCTION

A. Mandate

1. At its seventh session, the Committee requested the Bureau, with the assistance of the Executive Secretary, to prepare a report for consideration at its eighth session on modalities for the functioning of operational linkages between the Conference of the Parties (COP) and the operating entity or entities of the financial mechanism (A/AC.237/31, para. 32(l)). The present note is submitted for the consideration of the Bureau, in the context of that request.

2. In preparing this note, the secretariat took into account relevant provisions of the Convention, views expressed by delegations at the seventh session of the Committee and information on current negotiations regarding the restructuring of the Global Environment Facility (GEF), as well as the analysis presented in secretariat document A/AC.237/26. The note is drafted in a style that would correspond to that of a report by the Bureau.

B. Background

3. Article 11.1 of the Convention states that the financial mechanism "shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to [the] Convention." The financial mechanism is to provide financial resources on a grant or concessional basis including for the transfer of technology.

4. Article 11.2 of the Convention states that the financial mechanism "shall have an equitable and balanced representation of all Parties within a transparent system of governance."

5. Article 11.3 of the Convention provides that "the Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:

> "(a) Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;
>
> "(b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;

"(c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for the accountability set out in [Article 11.1]; and

"(d) Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed."

6. Article 11.4 of the Convention provides that "the Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained." These interim arrangements designate the Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development as the international entity entrusted with the operation of the financial mechanism on an interim basis and call for its restructuring. Article 11.4 also states that "within four years thereafter, the Conference of the Parties shall review the financial mechanism and take appropriate measures."

7. In drafting this note, references are made to an "operating entity" of the financial mechanism. This is without prejudice to there being more than one such entity, as provided in the Convention.

8. Discussion by the Committee of modalities for the functioning of operational linkages could address:

(a) Scope of guidance to be provided by the COP to the operating entity;

(b) Conformity of funded projects with policies, programme priorities and eligibility criteria;

(c) Reconsideration of funding decisions, including resolution of differences regarding "agreed full incremental costs";

(d) Reporting by the operating entity to give effect to its accountability to the COP;

(e) Arrangements to determine the amount of funding necessary and available for the implementation of the Convention;

(f) Negotiation and conclusion of an agreement between the COP and the operating entity;

(g) Review and evaluation of modalities.

II. SCOPE OF GUIDANCE TO BE PROVIDED BY THE CONFERENCE OF THE PARTIES TO THE OPERATING ENTITY

9. The COP, at each session as needed, will address a report, resolution or other communication to the governing body of the operating entity, compiling its relevant guidance and decisions adopted at that session, for consideration and action by this governing body. Guidance from the COP would include policies, eligibility criteria and programme priorities. These could be comprehensive and address numerous aspects of the activities of the operating entity that are related to the Convention, including guidance on the determination of agreed full incremental costs and cost effectiveness in relation to climate change projects or projects with a climate change component. Guidance could also be related to the reconsideration of funding decisions (see section IV below). The COP would also communicate its conclusions regarding the determination of the amount of funding necessary for the implementation of the Convention (see section VI below). On all these questions, the COP may be assisted by the appropriate subsidiary body or bodies.

10. Guidance from the COP to the operating entity would apply to the funding of activities that are carried out in Parties that are eligible for funding from the operating entity in implementation of funding commitments under the Convention. 1/ The question arises whether the same funding channels could be utilized to provide funding for activities related to the Convention in States not eligible for finance under the Convention. In such a case, the further question arises whether funding for such activities would be subject to guidance from the COP.

III. CONFORMITY OF FUNDED PROJECTS WITH POLICIES, PROGRAMME PRIORITIES AND ELIGIBILITY CRITERIA

11. The governing body of the operating entity would have the responsibility of ensuring that funded projects related to the Convention are in conformity with the policies, programme priorities and eligibility criteria established by the COP. The governing body of the operating entity would report regularly to the COP on its activities related to the Convention and their conformity with guidance received. These reports would cover all activities carried out by the operating entity in implementation of the Convention, whether decisions on such activities were made by the governing body of the operating entity or by any bodies operating under its auspices for the implementation of its programme.

12. The COP may request an appropriate subsidiary body to review reports received from the governing body of the operating entity in order to assess the conformity of operations related to the Convention with guidance given. In order to minimize the risk of differences between such operations and guidance that could be revealed through an ex post review, a procedure of prior review by or on behalf of the COP could be considered. One option for such a review would be for the governing body of the operating entity to present in advance its programme of activities related to the Convention, for the COP to appreciate ex ante the conformity of the programme with the policies, eligibility criteria and programme priorities decided by it.

IV. RECONSIDERATION OF FUNDING DECISIONS, INCLUDING RESOLUTION OF DIFFERENCES REGARDING "AGREED FULL INCREMENTAL COSTS"

13. There may be interest by a Party or Parties in the reconsideration of decisions both to provide or to deny funding to a particular project in the light of the policies, programme priorities and elegibility criteria established by the COP. Even in the former case, a Party may be interested in the reconsideration of the level of funding granted or of the very decision to provide funding. In either case, a recourse would be submitted by the interested Party to the COP. The COP may request an appropriate subsidiary body to review the recourse and advise it of its findings. If the COP decided, based on these findings, to call for a reconsideration of a funding decision, it would so recommend to the governing body of the operating entity. The governing body of the operating entity would report back on action taken. Consideration may need to be given to criteria to determine the conditions under which reconsideration may be requested by a Party or Parties.

14. Differences in interpreting and applying Article 4.3 with respect to the determination of "agreed full incremental costs" may constitute instances of difference on funding decisions and thus be addressed according to the modalities described in the previous paragraph. Alternatively, they may correspond to a problem of conformity with policies and be addressed according to the modalities described in section III above.

V. REPORTING BY THE OPERATING ENTITY TO GIVE EFFECT TO ITS ACCOUNTABILITY TO THE CONFERENCE OF THE PARTIES

15. Regular reports on operations by the Chairman or secretariat of the operating entity to its governing body would be made available to the COP, under cover of a note drawing attention to the elements related to the Convention. In addition, as stated in the conclusion reached by the Committee at its seventh session (A/AC.237/31, para. 32(j)), reports from the governing body of the operating entity to the COP should include specific information on how it has applied the guidance and decisions of the COP in its work related to the Convention. In order to meet the requirements of its accountability to the COP, the governing body of the operating entity would make such arrangements as might be necessary regarding the disclosure of information with any bodies operating under its auspices for the implementation of its programme. As suggested above (para. 12), consideration may be given to the prior review of the work programme of the operating entity related to the Convention, so that the conformity of the programme with the policies, eligibility criteria and programme priorities established by the COP could be assessed ex ante.

VI. ARRANGEMENTS TO DETERMINE THE AMOUNT OF FUNDING NECESSARY AND AVAILABLE FOR THE IMPLEMENTATION OF THE CONVENTION

16. The COP would periodically review the amount of funding necessary and available through the financial mechanism for the implementation of the Convention. 2/ Having determined the amount of funding necessary, the COP would communicate its conclusions to the operating entity, so that the entity may take steps to ensure that this funding is available in an identifiable and predictable manner. 3/

17. Parties which would be expected to provide funds through the operating entity would previously have participated in the determination of funding needs by the COP. This would constitute an important contribution to the credibility of fund-raising efforts.

18. Regarding the predictability of funding, arrangements based on practice in other funding institutions may be given consideration. In this connection, the Convention does not specify whether funding should be provided by developed country Parties on a voluntary basis or whether consideration is to be given to assessed contributions. The reference to burden sharing in Article 4.3 should be recalled in this context.

VII. NEGOTIATION AND CONCLUSION OF AN AGREEMENT BETWEEN THE CONFERENCE OF THE PARTIES AND THE OPERATING ENTITY

19. The above modalities should be incorporated into a comprehensive agreement listing the respective obligations of the two bodies and the means of communication between the two. Such an agreement would be negotiated and concluded between the COP and the governing body of the operating entity. The procedure for negotiating and concluding the agreement would be determined by the two bodies. As an interim arrangement, a memorandum of understanding could be drawn up for approval by the COP and the governing body of the operating entity.

VIII. REVIEW AND EVALUATION OF MODALITIES

20. Periodically, the COP would review and evaluate the effectiveness of all modalities established in accordance with Article 11.3. The conclusions of such reviews would be taken into account by the COP in its decisions, pursuant to Article 11.4, on the maintenance or otherwise of the interim arrangements for the financial mechanism.

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Notes

1/ See document A/AC.237/37/Add.1, para. 12, for proposals concerning criteria relating to the eligibility of countries to receive funding through the financial mechanism.

2/ See document A/AC.237/37/Add.1, para. 9(f).

3/ Elements relevant to the assessment of funding needs are presented in document A/AC.237/37/Add.4.